



Crl.MP.No.19990/2023 in Crl.A.No.233/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.MP.No.19990/2023 in Crl.A.No.233/2020

Dheena @ Dheenadhayalan

.. Petitioner

Versus

State rep by
The Inspector of Police,
Orakadam Police Station,
Kanchipuram District.
(Cr.No.785/2012)

.. Respondent

Prayer:-Criminal Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to suspend the sentence imposed by the trial Court in judgement dated 27.02.2020 made in S.C.No.63 of 2014 on the file of the learned Additional Sessions Judge (Fast Track Court), Kanchipuram, and enlarge the petitioner on bail pending the disposal of the above criminal appeal.



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For Petitioner : Mr.M.Ravikumar
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

This criminal miscellaneous petition has been filed seeking to suspend the sentence imposed on the petitioner vide judgement and order dated 27.02.2020 passed in S.C.No.63 of 2014 on the file of the learned Additional Sessions Judge (Fast Track Court), Kanchipuram, and to enlarge the petitioner on bail pending disposal of the appeal.

2. The case of the prosecution is that, the deceased and the petitioner came to know each other through a friend and consumed liquor together; and that thereafter, they went out together; that a quarrel arose and the deceased abused the petitioner in filthy language; and that the petitioner attacked the deceased with a stone; and that the petitioner took the



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belongings of the deceased, namely two cell phones and Rs.400/- in cash.

3. Heard the learned counsel for the petitioner/sole accused and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4.Learned counsel for the petitioner submitted that the prosecution case rests on the extra judicial confession said to have been given by the petitioner to P.W.7; that the said extra judicial confession (Ex.P6) cannot be believed as P.W.7 had admitted that Ex.P6 was recorded by P.W.7 in the police station; and that hence, the said confession cannot be said to be voluntary and truthful. Hence, he prayed for suspension of sentence.

5.Learned Additional Public Prosecutor, per contra, submitted that the recovery of articles from the petitioner and the extra judicial confession would conclusively establish the involvement of the petitioner, and prayed for dismissal of the petition for suspension of sentence.



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6. We have carefully considered the submissions made on either side.

Admittedly, the only evidence relied upon by the prosecution is the extra judicial confession, Ex.P6 said to have recorded by P.W.7. P.W.7 admitted in the cross examination that the extra judicial confession was written by him at the police station. In such circumstances, no reliance can be placed on the extra judicial confession and the evidence of P.W.7. There are no other circumstances pointing out to the guilt of the petitioner.

7. Considering the above facts and since the petitioner is in custody from 27.02.2020, and the appeal is not likely to be taken up in the near future, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

8. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed on the petitioner is suspended on the following conditions:



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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned District Munsif Cum Judicial Magistrate, Sriperumbudur;
- (ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on every Monday and Thursday at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

[M.S.R.,J.] [S.M.,J.]
18.03.2024

Anu

Issue order copy by 20.03.2024

Upload the order copy forthwith.

Internet: Yes



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M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu

To

1.The District Munsif Cum Judicial Magistrate,
Sriperumbudur

2.The Inspector of Police,
Orakadam Police Station,
Kanchipuram District.

3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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